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§ 2608, was chargeable with interest on a certain amount received from the estate of the ward's grandfather from that date.

11. Pleading (§ 36 (2)*)—Suit to Compel Accounting by Guardian—Theory of Bill—Right to Commissions.—A ward who, in her bill to compel her guardian to account, took the position that certain stock owned by her grandfather had been converted into money by the guardian, so that he was chargeable with the money value, cannot insist the guardian should not be allowed commissions on such value under the rule that commissions are not allowable to fiduciaries on unconverted assets distributed in kind, or which should have been so distributed.

12. Guardian and Ward (§ 141*)—Accounting—Unconverted Property.—Where property coming into the hands of a guardian from the estate of his ward's grandmother was never converted into money, never treated by the guardian as converted, or charged to him in his *ex parte* settlements as converted, the guardian is not chargeable with the money value of such unconverted property.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 825.]

13. Guardian and Ward (§ 151*)—Right to Commissions—Property Improperly or Not at All Converted.—A guardian is not entitled to commissions on property of the estate which he had no authority to convert into money or which he did not in fact convert into money.

14. Guardian and Ward (§ 54*)—Interest on Items of Disbursement.—A guardian is not entitled to interest from the date of expenditure on small individual items of disbursements in the yearly statements; it is only when a large sum is disbursed early in the year, and it would work an unreasonable hardship not to do so, that interest will be allowed the guardian on any item of disbursement from the date of payment.

Appeal from Circuit Court, Prince Edward County.

Suit by Philippa R. Spencer, by, etc., against B. M. Bliss, guardian. From decree for plaintiff, defendant appeals. Reversed in part, and affirmed in part.

A. B. Armstrong and Watkins & Brock, all of Farmville, for appellant.

J. Taylor Thompson, of Farmville, for appellee.

PENICK'S EX'R *v.* WALKER et al.

June 12, 1919.

[99 S. E. 559.]

1. Wills (§ 440*)—Construction—Intention—Ascertainment from Words.—The primary rule of construction is to determine testator's

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

intention from the language he used, giving effect to the will accordingly, if the meaning of his language is plain.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 780, 781.]

2. Wills (§ 441*)—Construction—Intention—Situation of Testator.—If there be doubt as to the meaning of the language used by testator, the court must place itself as nearly as possible in his situation at time of execution of the will.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 1043.]

3. Wills (§ 567*)—Gift under Mistaken Belief as to Amount of Estate.—It being clear from the words: "This sum can be made up of moneys from my insurance policies," following a bequest of \$10,000 in trust, to pay the interest to testator's daughter for a time, and then divide the principal between her and her children, that testator overlooked the fact that the \$10,000 insurance would go to her as matter of contract, and that he thought he was dealing with an estate of \$30,000, instead of one of \$20,000, and intended to give her a third of it, the conclusion is inevitable that, though such words were merely directory, he did not intend his daughter to have both the insurance money and an additional \$10,000, and so the gift fails.

Appeal from Circuit Court, Halifax County.

Suit by Mary C. Penick Walker against the executor of Charles C. Penick, deceased, and others. From an adverse decree, the executor appeals. Reversed and remanded.

Samuel L. Adams, of South Boston, *Jas. E. Cannon* and *S. A. Anderson*, both of Richmond, *Clifton H. Penick*, of Tuscaloosa, Ala., and *John Martin*, of Houston, for appellant.

H. C. Riely, of Richmond and *Easley & Bouldin*, of Houston, for appellees.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.